

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KENNETH EUGENE POOL,

Defendant.

No. CR01-2040-LRR

ORDER


This matter comes before the court on the defendant's motion pursuant to rule 60(b)(6) of the federal rules of civil procedure (Docket No. 95). The defendant filed such motion on December 12, 2006. The government did not file a resistance.

In his motion pursuant to rule 60(b)(6) of the federal rules of civil procedure, the defendant challenges the validity of the sentence that the court imposed. The challenge asserted is the type of challenge properly submitted as a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. *See United States v. Lurie*, 207 F.3d 1075, 1077 (8th Cir. 2000) (stating that a "challenge to a federal conviction [. . .] is most appropriately brought as a motion under 28 U.S.C. § 2255"). A motion pursuant to Federal Rule of Civil Procedure 60(b) may not be used as a substitute for a motion pursuant to 28 U.S.C. § 2255. The defendant should have relied upon 28 U.S.C. § 2255, rather than Federal Rule of Civil Procedure 60(b), to invoke the jurisdiction of the court. In sum, the court concludes that granting relief pursuant to Federal Rule of Civil Procedure 60(b)(6) is not proper. Accordingly, the defendant's motion pursuant to rule

60(b)(6) of the federal rules of civil procedure (Docket No. 95) is denied.

IT IS SO ORDERED.

DATED this 8th day of January, 2007.



LINDA R. READE
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA